



# Mental Capacity Act 2005

## 2005 CHAPTER 9

### PART 1

#### PERSONS WHO LACK CAPACITY

##### *Independent mental capacity advocate service*

#### [<sup>F1</sup>39A Person becomes subject to Schedule A1

- (1) This section applies if—
  - (a) a person (“P”) becomes subject to Schedule A1, and
  - (b) the managing authority of the relevant hospital or care home are satisfied that there is no person, other than one engaged in providing care or treatment for P in a professional capacity or for remuneration, whom it would be appropriate to consult in determining what would be in P's best interests.
- (2) The managing authority must notify the supervisory body that this section applies.
- (3) The supervisory body must instruct an independent mental capacity advocate to represent P.
- (4) Schedule A1 makes provision about the role of an independent mental capacity advocate appointed under this section.
- (5) This section is subject to paragraph 161 of Schedule A1.
- (6) For the purposes of subsection (1), a person appointed under Part 10 of Schedule A1 to be P's representative is not, by virtue of that appointment, engaged in providing care or treatment for P in a professional capacity or for remuneration.]

#### Textual Amendments

- F1** Ss. 39A-39E inserted (1.4.2009) by [Mental Health Act 2007 \(c. 12\)](#), ss. 50, 56, [Sch. 9 para. 6](#); S.I. 2009/139, [art. 2\(e\)](#) (with [art. 3](#))

**Status:**

Point in time view as at 01/04/2009. This version of this provision has been superseded.

**Changes to legislation:**

There are currently no known outstanding effects for the Mental Capacity Act 2005, Section 39A.